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Supreme Court of the United States

OCTOBER TERM, 1960

No. 264

GEORGE LATUS,
Petitioner,

against

UNITED STATES OF AMERICA,
Respondent,

TODD SHIPYARDS CORP.,
Respondent-Impleaded.

BRIEF OF RESPONDENT-IMPLEADED, IN OPPOSITION TO LIBELANT'S PETITION FOR WRIT OF CERTIORARI

GALLI, TERHUNE, GIBBONS & MULVEHILL,
Attorneys for Respondent-Impleaded,
80 John Street,
New York City.

PATRICK E. GIBBONS,
Of Counsel.

URBAN S. MULVEHILL,
on the Brief.

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Opinions Below

The opinion of the United States District Court for the Eastern District of New York, dismissing the libel is reported at 170 Fed. Supp. 837.

The opinion of the United States Court of Appeals for the Second Circuit is reported at 277 Fed. 2d 265.

Statement

A libel was filed against the United States of America in the Southern District of New York under the Suits in Admiralty Act, to recover damages for personal injuries. The United States of America impleaded Todd Shipyards Corp. alleging a contract of indemnity.

The *SS. Robert Fulton*, an ocean going vessel had been deactivated on September 5, 1947 and placed in "mothball" fleet; it was then withdrawn from maritime service. In October of 1951 the United States of America commenced to reactivate the *SS. Robert Fulton* and this vessel was in the process of being made ready to be returned to maritime service on November 23, 1951, the date of the accident.

The libelant, a member of the night shift, working for the impleaded Todd Shipyards as a painter was injured on November 23, 1951 on Board the *SS. Robert Fulton* when he attempted to walk across the forward No. 1 hatch.

The Question Presented

1. Whether a vessel can be liable *in rem* to a shoreworker who performs labor on a vessel which has been withdrawn from maritime service and docked in a private shipyard for the purpose of reactivation and where the owner being out of control is not liable to the injured workmen in negligence.

Argument

The libel was properly dismissed.

The libelant herein claims a lien under the General Maritime Law and requests the vessel be liable *in rem* independent of personal duty or fault. This claim if applied herein would extend the fictional doctrine that the ship itself is the offender and, therefore, responsible for the fault of others. It is suggested that this extension is beyond the previously established limits under the Maritime Law and has not received judicial sanction; and further that the case of *West* v. *The United States*, 361 U. S. 118, controls herein upon this question.

The presently established exceptions under the Maritime Law of those cases of liability *in rem* when the owner is out of control or without independent personal duty, or

fault are limited to the compulsory pilot (The China, 7 Wallace 53), and the "bare boat" charterer crew's negligence (The Barnstable, 181 U. S. 464).

The *West* case, *supra*, in a similar situation as presented here, sets out therein three necessary concurring conditions all of which need be present for an *in rem* liability independent of personal duty or fault. The three factors are: firstly, the injury must occur when the individual is performing the historical and traditional duties of the seaman; secondly, the vessel be in maritime service, and thirdly, the owner be in control of the vessel or that part of the vessel being repaired: The *West* case, *supra*, further defines that the work must be measured, by a general application in contrast to a specific part of the general work. In the present case, we find absent the necessary qualifications under the *West* case, *supra*, and the *in rem* libel without fault is excluded herein under both the theory of an express or implied warranty of seaworthiness or the theory of non-delegable duty to furnish a safe place to work.

CONCLUSION

The principles of law underlying the decision of the District Court and of the Court of Appeals are well established; and are set out by this Court in the case of *West* v. *United States, supra*. The petition for writ of certiorari should therefore be denied.

Respectfully submitted,

GALLI, TERHUNE, GIBBONS & MULVEHILL,
Attorneys for Respondent-Impleaded.

PATRICK E. GIBBONS,
Of Counsel.

URBAN S. MULVEHILL,
On the Brief.